

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

JOSEPH SMITH, et al.,

Defendants.

Case No. 1:06-CR-00394

Judge Ann Aldrich

MEMORANDUM AND ORDER

Before the court are a number of pretrial motions: (1) defendant Anton Zgoznic’s (“Zgoznic”) motion to strike and exclude [Docket No. 106]; (2) Zgoznic’s motion to compel [Docket No. 102]; and (3) the Catholic Diocese of Cleveland, the Catholic Cemeteries Association, the Center for Pastoral Leadership, St. Mary’s Seminary and Borromeo Seminary’s (collectively, the “Diocese”) motion to quash or in the alternative for a confidentiality order [Docket No. 109].

Zgoznic's motion to strike and exclude seeks to strike certain charges from the indictment, and to exclude certain evidence from trial, on what amounts to First Amendment grounds. Plaintiff the United States of America (the "Government") opposes this motion, arguing that it should be summarily denied as untimely. The court's August 24, 2006 criminal pretrial order [Docket No. 7] set a deadline of October 16, 2006 for pretrial motions, and the court's October 26, 2006 order [Docket No. 25] extended that deadline to February 16, 2007. Zgoznic's motion is effectively a motion to dismiss, on First Amendment grounds, nine of the charges against him. Such a motion should have been filed before February 16, 2007; failure to do so constitutes waiver under Federal Rule of Criminal Procedure 12(e). The court therefore denies Zgoznic's motion to strike and exclude [Docket No. 106] as untimely.

In his motion to compel, Zgoznic seeks to compel production of the tax returns for Zrino Jukic, one of the Government's witnesses. However, in order for the court to order the Government to produce Mr. Jukic's returns, the court must find that the returns in question are "probative of a matter in issue relevant in establishing the commission of a crime or the guilt or liability of a party." Because the tax charges against Zgoznic concern returns for Zgoznic's companies, the court cannot find that Mr. Jukic's personal returns are probative of Zgoznic's guilt or liability at this time. The court therefore denies Zgoznic's motion to compel [Docket No. 102], but permits Zgoznic to raise the issue in the future if Jukic's testimony or other evidence presented at trial make Jukic's returns specifically relevant to the charges against Zgoznic.

In the Diocese's motion to quash or for a confidentiality order concerning subpoenas to Ciuni & Panichi, Inc. CPA ("Ciuni") and Hauser & Taylor LLC ("Hauser"), the Diocese states that it would have no problem with the production of documents pursuant to those subpoenas so long as the same confidentiality restrictions afforded to documents previously produced by the Diocese apply. The court finds that the same confidentiality restrictions should apply to these documents, which would be considered Segment Two documents under the classification system proposed by the Diocese and adopted by the court for the resolution of discovery issues. Therefore, the court grants the Diocese's motion [Docket No. 109] in part, and directs that any documents produced pursuant to the subpoenas served on Ciuni and Hauser are to be kept strictly confidential, are to be seen only by counsel to the parties and the parties themselves, and neither the documents nor copies of them shall be released, shown or produced to anyone else. The final confidentiality condition – that prior to the introduction of a document at trial, any party wishing to do so must make a specific offer of proof for that document, explaining how that specific document bears on the issues at trial – applies only to Segment One

documents produced by the Diocese and McDonald & Company, not to the management letters and related materials sought by the subpoenas at issue in the instant motion.

IT IS SO ORDERED.

/s/ Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: August 15, 2007